



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF N-S-M-K-

DATE: SEPT. 29, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a fluid mechanics and heat transfer researcher, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this immigrant classification. *See* § 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Nebraska Service Center, denied the petition. The Director found that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of a job offer would be in the national interest.

The matter is now before us on appeal. In her appeal, the Petitioner argues that she possesses a degree of expertise significantly above that ordinarily encountered in her field and that she satisfies the national interest waiver requirements.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . the Attorney General¹ may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

¹ Pursuant to section 1517 of the Homeland Security Act of 2002 (“HSA”), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA “shall be deemed to refer to the Secretary” of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

II. ANALYSIS

The Petitioner received her Ph.D. in Mechanical Engineering from the [REDACTED] in 2013. The Director determined that the Petitioner qualified as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest according to the three-pronged analysis set forth in *NYSDOT*.

On appeal, the Petitioner indicates that she also satisfies the evidentiary requirements at 8 C.F.R. § 204.5(k)(3)(ii) and (iii), and thus qualifies as an individual of exceptional ability. As the Petitioner is already eligible for the underlying immigrant classification as a member of the professions holding an advanced degree, an additional finding of exceptional ability would serve no meaningful purpose in this matter. Pursuant to section 203(b)(2)(A) of the Act, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. *NYSDOT*, 22 I&N Dec. at 218, 222. Therefore, whether the Petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, she cannot qualify for a national interest waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. The national interest waiver is an additional benefit, separate from the classification sought, and therefore eligibility for the underlying classification does not demonstrate eligibility for the additional benefit of the waiver.

The Petitioner argues that her “field of expertise is most properly focused on the area of ‘fluid mechanics & heat transfer’” rather than the broader engineering discipline of mechanical engineering. In addition, the Petitioner requests that we consider the reference letters offered in support of the petition that describe her research contributions in fluid mechanics and heat transfer.

A. Substantial Intrinsic Merit

The Petitioner seeks to continue her work as an assistant professor of mechanical engineering in the department of mechanical and aerospace engineering at [REDACTED]. She submitted documentation showing that her research concerning fluid mechanics and heat transfer is in an area of substantial intrinsic merit. Accordingly, the record supports the Director’s determination that the Petitioner meets the first prong of the *NYSDOT* national interest analysis.

B. National in Scope

The Petitioner provided evidence indicating that the proposed benefit of her research in ferrofluids and fire behavior has national and international reach, as the results from her work are disseminated to others in the field through conferences and journals. Therefore, the record supports the Director’s determination that the Petitioner meets the second prong of the *NYSDOT* national interest analysis.

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C. Serving the National Interest

It remains, then, to determine whether the Petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The Director determined that the Petitioner's impact and influence on her field did not satisfy the third prong of the *NYSDOT* national interest analysis.

In addition to documentation of her published work, conference presentations, peer review activities, research projects, and academic credentials, the Petitioner submitted various reference letters discussing her work in the field. For example, several of the Petitioner's references mentioned her activities with the [redacted] chair of the department of mechanical and aerospace engineering at [redacted] explained that in 2007, the school's [redacted] partnered with the [redacted] and the [redacted] through the [redacted] program. The [redacted] and [redacted] collaborated "to study firefighting tactics and strategies for wind-driven high-rise fires via live burns and scientific simulations." [redacted] indicated that the Petitioner "assisted the [redacted] fire research team to successfully complete three projects" funded by the [redacted] program, but there is no supporting documentary evidence indicating that the Petitioner was identified as an investigator on any [redacted]-funded grants, and insufficient evidence of the extent of her assistance to the team.

[redacted] a senior scientist and manager with the [redacted] described one of the projects, stating (note: errors in the original text have not been changed):

[redacted] conducted a research with [redacted] and the fire departments from [redacted] and [redacted] MN [redacted] developed a web-based, interactive multimedia training [redacted] to disseminate firefighter-related research and to educate firefighters for a wide variety of topics.

With respect to the Petitioner's work with the [redacted] a professor of mechanical engineering at [redacted] and the Petitioner's Ph.D. advisor, indicated that in 2008, the Petitioner "assisted the [redacted] fire research team during 14 live burn tests conducted on [redacted] [redacted] noted that the aforementioned "experiments evaluated and demonstrated the ability of positive pressure ventilation fans (PPV), wind control devices (WCD) and floor below nozzles [redacted] to create tenable conditions for rescue firefighters." In addition, [redacted] mentioned that the Petitioner "assisted in conceptualizing and developing the [redacted] training methodology." [redacted] further stated that the Petitioner's "ability to statistically analyze and interpret the data helped the team to scientifically validate the efficacy of [redacted] "a registered copyrighted computer program," which "is currently in beta-testing with several fire departments." While [redacted] résumé lists the [redacted] copyright [redacted] among his research accomplishments, there is no intellectual property documentation or other evidence reflecting that the Petitioner was also an author or co-inventor of the [redacted] firefighter training module.

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The record includes various articles about [REDACTED] that were written or contributed to by [REDACTED] and [REDACTED] and that are available at [REDACTED] and [REDACTED]. The submitted articles do not mention the Petitioner or discuss any of her specific contributions to [REDACTED] to corroborate the references' claims that she conceptualized or developed the [REDACTED] training methodology. Furthermore, although the Petitioner's colleagues at [REDACTED] contend that she "helped the team to scientifically validate the efficacy of [REDACTED] there is no evidence that she has contributed to any of the published research articles concerning the [REDACTED] training tool. For example, [REDACTED] and [REDACTED] authored an article about [REDACTED] in [REDACTED] entitled [REDACTED]

[REDACTED] The Petitioner is not listed as an author or identified anywhere in the acknowledgements section of the aforementioned article, and she provided no evidence of any work that she has published as a result of her participation with the [REDACTED] training tool.

While the Petitioner may have provided support and assistance to the [REDACTED] projects and the [REDACTED] training tool, the record does not demonstrate that her specific work has influenced the field at a level sufficient to waive the job offer requirement. Furthermore, there is no documentary evidence indicating that any findings from the Petitioner's fire behavior and heat transfer research have been frequently cited by independent researchers or have otherwise affected the field as a whole.

Additional references mention the Petitioner's fluid mechanics research. For instance, [REDACTED] professor of physics at [REDACTED] stated that the Petitioner's "research articles are excellent and make important contributions to the technically important field of ferrofluids," but did not further describe these contributions. Regarding her published and presented work, there is no presumption that every published article or conference presentation demonstrates influence on the field as a whole; rather, the Petitioner must document the actual impact of her article or presentation. In this instance, there is no evidence showing that once disseminated through publication or presentation, the Petitioner's work has garnered a significant number of independent citations or that her findings have otherwise influenced the field of ferrofluids as a whole.

[REDACTED] associate professor of mathematics at [REDACTED] mentioned that the Petitioner "has extended theoretical models of ferrofluids and made measurements of their essential properties" and that her work "has important applications for the construction of sensors," but did not provide any examples indicating that her work has altered sensor construction practices or has otherwise affected the field as a whole. Although the Petitioner's fluid mechanics and heat transfer research has value, any research must be original and likely to present some benefit if it is to receive funding and attention from the academic or scientific community. In order for a university, publisher, or grantor to accept any research for graduation, publication, or funding, the research must offer new and useful information to the pool of knowledge. Not every scientist who performs original research that adds to the general pool of knowledge in the field inherently serves the national interest to an extent that is indicative of influence on the field as a whole.

_____ professor of physics and pharmaceutical sciences at _____ described the Petitioner's work concerning the "behavior of field-assisted magnetic nanoparticles in a colloidal suspension." _____ indicated that the Petitioner's research findings "have advanced understanding of enhancement in heat transfer rate of ferrofluids that can be used in thermal systems" and noted that he is "collaborating with her on developing [a] new system of imaging and treating the brain tumor by using magnetic nanoparticles." With regard to their collaboration, _____ expressed his belief that "society will benefit from this research in the future." Similarly, _____ professor of biomedical engineering at the _____ indicated: "[The Petitioner's] research methodologies and findings could be applied to my work, with the potential to yield results to improve biomedical imaging systems or develop new instrumentations."

While _____ and _____ attested to the potential impact of the Petitioner's work, they did not offer any examples indicating that her work already has been utilized in any thermal systems, has altered diagnostic or treatment protocols for brain tumors, has improved biomedical imaging systems, has affected the development of new medical instrumentation, or has otherwise influenced the field as a whole. A petitioner cannot successfully file a petition under this classification based on the expectation of future eligibility. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The Petitioner submitted letters of varying probative value. We have addressed the specific affirmations above. Generalized conclusory statements that do not identify specific contributions or their impact in the field have little probative value. See *1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). In addition, uncorroborated statements are insufficient. See *Visinscaia v. Beers*, 4 F.Supp.3d 126, 134-35 (D.D.C. 2013) (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field); see also *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner's eligibility. *Id.* See also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). As the submitted reference letters did not establish that the Petitioner's work has influenced the field as a whole, they do not demonstrate her eligibility for the national interest waiver.

Regarding the Petitioner's services as a peer reviewer for _____ it is common for a publication to ask multiple experts to review a manuscript and to offer comments. The publication's editorial staff may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers. Thus, peer review is routine in the field, and there is no evidence demonstrating that the Petitioner's occasional participation in the widespread

peer review process is an indication that she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

With respect to the documentation reflecting that the Petitioner has presented her findings at scientific meetings and engineering conferences, we note that many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and to network with other professionals. Professional associations, educational institutions, engineering organizations, employers, and government agencies promote and sponsor these meetings and conferences. Although presentation of the Petitioner's work demonstrates that she shared her original findings with others, there is no documentary evidence showing, for instance, frequent independent citation of her work, or that her findings have otherwise influenced the fields of fluid mechanics and heat transfer at a level sufficient to waive the job offer requirement.

III. CONCLUSION

Considering the letters and other evidence in the aggregate, the Petitioner has not established by a preponderance of the evidence that she has a past record of demonstrable achievement with some degree of influence on the field as a whole or that she will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. Therefore, the Petitioner has not demonstrated that a waiver of the job offer requirement will be in the national interest of the United States. Accordingly, the appeal will be dismissed. The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of N-S-M-K-*, ID# 77881 (AAO Sept. 29, 2016)